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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,767	09/01/2000	Scott T. Allan	A-68678/MAK/LM	6140
30636 7590 05/04/2007 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER OUELLETTE, JONATHAN P	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/653,767	Applicant(s) ALLAN ET AL.	
	Examiner Jonathan Ouellette	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 26-61 and 65-73 is/are pending in the application.
- 4a) Of the above claim(s) 65, 66 and 71-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 26-61 and 67-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. The Request filed on 2/21/2007 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/653,767 is acceptable and a RCE has been established. An action on the RCE follows.

Response to Amendment

2. Claims 16-25 and 62-64 have been cancelled, and Claims 65, 66 and 71-73 are withdrawn from consideration due to an earlier restriction election; therefore, Claims 1-15, 26-61, 67-70 are examined below.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1-15, 26-61, 67-70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The independent claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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5. Independent Claims 1, 60, 67, 68 disclose the calculation of and use of a “busyness metric” when determining ads to play at the POS location. The busyness metric is not described in the specification or drawings in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

6. The rejection of Claims 1-13, 29-61, 63, 64, 68-70, 73 under 35 U.S.C. 103(a) as being unpatentable over Sleeper (US 6,401,074) is withdrawn due to Applicant’s amendments.
7. The rejection of Claims 14-15 and 26-28 under 35 U.S.C. 103(a) as being unpatentable over Sleeper in view of Dejaeger et al. (US 6,456,981 B1) is withdrawn due to Applicant’s amendments.
8. The rejection of Claim 67 under 35 U.S.C. 103(a) as being unpatentable over Sleeper in view of Dejaeger, and further in view of Kolls (US 6,615,183) is withdrawn due to Applicant’s amendments.

Response to Arguments

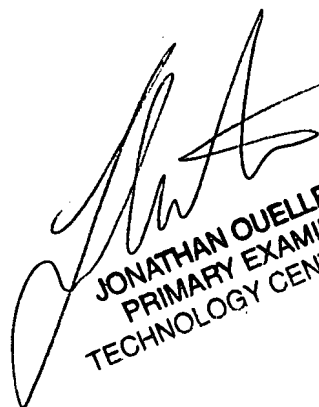
9. Applicant's arguments with respect to Claims 1-15, 26-61, 67-70 have been considered, but are moot in view of the new ground(s) of rejection.

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Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent

April 30, 2007


JONATHAN OUELLETTE
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600